

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Case No. 2:16-CR-151 JCM (GWF)

**Plaintiff(s).**

## ORDER

V.

WILLIAM KACENSKY,

**Defendant(s).**

Presently before the court are the report and recommendation of Magistrate Judge Foley (ECF No. 25) regarding the government's motion to dismiss count two of the criminal indictment (ECF No. 21) against defendant William Kacensky (ECF No. 1). No timely opposition to the report and recommendation has been filed.

This court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party fails to object to a magistrate judge’s report and recommendation, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. *See United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to which no objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in *Reyna-Tapia* as adopting the view that district courts are not required to review “any issue that is not the subject of an objection.”).

Nevertheless, this court finds it appropriate to engage in a *de novo* review to determine whether to adopt the recommendation of the magistrate judge.

Magistrate Judge Foley noted that the government seeks to dismiss count two of the criminal indictment—charging defendant with aggravated identify theft pursuant to 18 U.S.C. § 1028A(c)—without prejudice. (ECF No. 25 at 1); *see also* Fed. R. Crim. P. 48(a). Defendant has filed his non-opposition to the government’s motion. (ECF No. 24). This filing indicates to the court that defendant recognizes his motion to dismiss count two of the indictment (ECF No. 18) is now moot. (ECF No. 24).

This court finds that the magistrate judge's report and recommendation properly analyzed the present motion. Therefore, they will be accepted by this court.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the report and recommendation of Magistrate Judge Foley (ECF No. 25) be, and the same hereby are, ADOPTED in their entirety.

IT IS FURTHER ORDERED that the government's motion to dismiss count two of the criminal indictment without prejudice (ECF No. 21) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that defendant's motion to dismiss count two of the indictment (ECF No. 18) be, and the same hereby is, DENIED as moot.

DATED September 21, 2016.

James C. Mahan  
UNITED STATES DISTRICT JUDGE